TRANSCRIPT

LEGISLATIVE ASSEMBLY ECONOMY AND INFRASTRUCTURE COMMITTEE

Inquiry into workplace surveillance

East Melbourne – Thursday 26 September 2024

(via videoconference)

MEMBERS

Alison Marchant – Chair	John Mullahy
Kim O'Keeffe – Deputy Chair	Dylan Wight
Anthony Cianflone	Jess Wilson
Wayne Farnham	

WITNESS

Dr Dale Tweedie, Senior Lecturer, Department of Accounting and Corporate Governance, Macquarie University.

 The CHAIR: Welcome to the public hearings for the Legislative Assembly Economy and Infrastructure Committee's Inquiry into Workplace Surveillance. All mobile telephones should now be turned to silent.

All evidence given today is being recorded by Hansard and broadcast live on the Parliament's website.

While all evidence taken by the Committee is protected by parliamentary privilege, comments repeated outside the hearing, including on social media, may not be protected by this privilege.

Witnesses will be provided with a proof version of the transcript to check. Verified transcripts and other documents provided to the Committee during the hearing will be published on the Committee's website. I will just remind members and witnesses to mute their microphones when not speaking just to minimise that interference.

Thank you so much, Dr Dale Tweedie, for joining our committee today and for your submission to the Committee to consider. What I thought I might do is allow a few minutes for you to do an opening statement or just talk to your submission a bit. Then we will go around and committee members will ask you a few questions. So I might hand over to you.

 Dale TWEEDIE: Sure. Thank you so much. My research looks at the impacts of workplace monitoring and surveillance on workers. It is mainly qualitative research interviewing workers about their experiences of various kinds of surveillance and performance monitoring systems but also looking of course at some of the wider research in this area. One of the articles we published recently with some colleagues looked at 100 years of research into how performance monitoring affects workers. So while there are new technologies, there is also a lot of research that has been done that we can draw on, and I have tried to bring some of that into the discussion in the submission.

By way of an opening statement, there are perhaps three points I would like to highlight from my submission that I think particularly speak to some of the policy implications of some of the research that I have been looking at. I think the first important point to stress from the research is the impact of different types of purposes of surveillance, or surveillance being used in different ways, so that it is possible to regulate surveillance that is harmful but also not particularly useful.

Sometimes the discussions around regulating surveillance focus on this tension between productivity on one hand and privacy rights on the other. I think that is an important debate, but there is also a lot of surveillance that is not particularly useful in terms of the productivity outcomes it produces. There is a discussion in the literature around purposeless surveillance, or surveillance creep, where employers are collecting surveillance data because they can, without a clear purpose in mind—so if you lose that surveillance, you do not necessarily lose anything of value.

On the other hand, one important way surveillance is used is often to control work costs by limiting quality. An example of that would be in call centres when you monitor how much time a worker spends on each call. You are not improving customer service; you are trying to limit costs by limiting quality. I think there is certainly a case that, with those types of surveillance, you can regulate and see benefits for the quality of the work that is produced at the end of the process.

The second point I want to stress is that there are a lot of issues around the rigour of the information that even quite technologically sophisticated systems produce. One of the perennial problems in surveillance is that a lot of techniques are good at measuring the quantity of work but not the quality of that work. If you think about something like a GPS tracker in the car of a home care worker, you can measure how many houses they go to but not the quality of the service that they deliver while they are there. Indeed if you devote more time, then your statistics go down. In professional work, key tracking can measure how much time you are tapping on your computer but not the depth of thought or the quality of advice that you are providing to your clients. Again there are ways to regulate surveillance in those cases that are not only protecting privacy rights but also looking at how we produce good quality work that meets the needs of people who are using that work at the end of it.

The last point I tried to stress is the importance of also looking at the context in which surveillance occurs from both worker and employer standpoints. I stressed from the worker's standpoint in my submission the prevalence of relatively insecure work in Australia, particularly casual work, but also of course it is in some of

these fast-growing areas where surveillance is most intense. Platform work is also work where there is little capacity to negotiate in any meaningful sense.

One of the models that we have in New South Wales is where we have this informed consent based model of regulation, where you disclose what your surveillance is and then people can respond to it in some way. It is very difficult for those workers, and they are quite a high proportion; 22 per cent of work is casual in Australia, for example. It is very difficult for a large section of workers to negotiate in any meaningful sense.

But I think there are also employer implications for some of these background conditions. I was interested to see one of the employer submissions, for example, was saying, 'Well, we work in an industry that has very tight cost margins, and if intensive surveillance drives productivity, then we need those surveillance tools to remain competitive.' I think that particular type of surveillance around putting pressure on numerical outcomes is problematic, but I think you can also read that as a case for industry-wide regulation. You do not just require one workplace to work out how they are going to manage this, but you set a minimum floor of standards across industry. Then everybody's costs rise at the same time in putting those benchmarks in place. So I think at an industry-wide level, those background conditions are also an important part of the discussion.

The CHAIR: Perfect. Thank you for that. This is certainly an area where the Committee I think would really get some benefit out of diving down a little bit into your submission, because you do talk to a lot of the harm that you are seeing and documenting in workplace surveillance. With that, though, I will let the other committee members ask some questions. I might go to John first.

John MULLAHY: Thank you, Chair. Thank you, Dr Tweedie, for your submission and also for turning up today. The harms are what I am quite interested in. We are obviously getting evidence through now about what the harms are with regard to workplace surveillance. What harms can workplace surveillance pose on both individual workers and organisations?

Dale TWEEDIE: Thank you. I think the harms are quite tied to the purpose that the surveillance is used for. I think the most problematic or harmful form of surveillance is surveillance that is used to either increase control or to really increase the intensity of work. Again there is an interesting example from one of the other submissions put to the Committee from the Laundry Association Australia. In the example they have a photo where they have a big monitoring screen that shows how many items you are processing and whether you are above or beyond target. This is quite similar to surveillance we have seen for 20 or 30 years in call centres, where you have a big sign of how many calls you have taken and your average call time and these kinds of things. The way those forms of surveillance function is really to increase the pace of work through creating anxiety and stress about the speed at which you are performing, and that is stressful in its own right just because surveillance is stressful. If somebody puts a camera in your living room, it is stressful in itself to be watched like that.

But then of course there are secondary effects. If you are working faster through work intensification, there is decades of research that shows faster work creates more stress and anxiety. There are also then risks of safety harms coming out of particularly that kind of platform-type work, like Uber and delivery work and that kind. If you speed up work in industries that are inherently dangerous—and of course transport is one of the most dangerous industries there is from a WHS perspective—then you increase the risk of accidents. Then there are a range of other things. There are lots of harms that are associated with it, but I think the other criteria as well is the intensity of surveillance. All other things being equal, the more intensively you are monitored, the more stress and anxiety there is.

I think, just standing back from that a little bit and thinking about the organisational role of surveillance as well, there is some pretty clear evidence about the effects of surveillance on workplace trust and the sense that the more you rely on individual metrics there is a sense in which you are replacing trust with control. Of course there is an accountability function of performance measurement, and that is important across a range of areas around ensuring people are doing their jobs and also safety and those kinds of things. But there is also a balance that if you take away people's capacity to make decisions outside of intensive surveillance, then you limit those relationships.

There have been some really interesting case studies that have looked at what has happened when organisations have wound back forms of individual control and replaced those surveillance practices with more open

dialogues about what is working and not working in the workplace. There is some case study evidence that suggests that in these cases there are actually some quite significant productivity benefits to be gained when you replace those top-down metrics with conversations about what is working, and you can see why that is. If you think about what performance metrics are good at doing, they are typically good at measuring the end point of a process: 'Was your customer happy with the service or not? Did you deliver X many products?' What they are not so good at is making sense of what actually needs to happen before that, what was the work you had to do in order to achieve that outcome. The more you push those end-level surveillance metrics, I think you potentially miss out on having those conversations about what is actually leading to good customer service or a good quality product or good care or whatever it is. There is a cost in that for organisations, and also I think for workers. I think in most cases there is pretty strong evidence that people want to do good work. They want to make a contribution. Part of those performance-monitoring systems are not necessarily about trying to force people who do not want to do work to do well but about how you create conditions where people can really deliver what they are capable of.

The CHAIR: Thank you for that. Wayne.

Wayne FARNHAM: Thank you, Chair. Thank you, Dale, for attending today. It has been an interesting committee, this one. The one thing where I see a common trend here is balance between the employer and employee. But I suppose it leads me to this question, which you probably just touched on then actually, about the situations where workplace surveillance is beneficial to the employers and the employees.

Dale TWEEDIE: Thank you. I mentioned in submission cases when workplace monitoring can be useful. I am thinking less about surveillance per se, like placing the cameras in workplaces, and more about various forms of monitoring how people perform and the quality of people's work. There are two factors that I think really stand out from the research in this area about under what circumstances performance monitoring can be beneficial. The first one is when performance monitoring is designed to increase people's skills and abilities in some way and therefore to deliver good-quality work. If you go back to the call centre example, if you look at why you might record calls—for example, I am sure you are all familiar with when you ring up and you hear 'This call might be monitored.' In research they have done on that, when people feel that that monitoring is actually being done to work with people to improve their capacity to meet the needs and concerns of people who are calling them up, then there is evidence that workers respond positively to that. If you compare that to the case I mentioned earlier where you are monitoring calls for the purposes of saying you need an average call time of 1 minute or 2 minutes or whatever it is, when really the purpose is just to churn through more calls, then people respond much more negatively. I think there is capacity for performance monitoring that is genuinely used to develop people's skills to be regarded more positively on both sides of the worker and employer equation.

The caveat, though, and the second point is also where people feel they have, and do in fact have, a say in how those standards are developed. At one end of the spectrum people respond quite negatively to surveillance that does not have a clear purpose—unjustified surveillance, and there is a reasonable amount of surveillance that is put in place without people understanding. If you move along that spectrum, then people respond more positively to surveillance that has a justification that people find more or less plausible , so things like safety, for example, or various kinds of organisational imperatives. And then at the ideal or other end of the spectrum there is performance monitoring where people have actually worked together to say, 'Well, how do we decide what standards we're going to use to assess whether we're delivering good quality work?'

And I think again, if you start from the position that people are looking to deliver good quality work, and in general I think that is fairly well supported in a range of case studies, then it is, well, how do you regulate surveillance in a way that enables people to work together to come up with ways of judging the quality of their work, which I think there is often fairly broad support for, and then limit ways that either serve no purpose or are really there to ratchet up the time pressure in ways that can be harmful in the ways we have just discussed.

Wayne FARNHAM: Would it be your view, Dale, that employees that have been consulted on their surveillance in their workplace—they have worked with the boss or management and they have been consulted—do you find those employees have less anxiety with surveillance in the workplace?

Dale TWEEDIE: Look, I think it is difficult to draw general principles. Certainly there is evidence that people are more accepting of and supportive of forms of surveillance or monitoring that they have been

consulted about. But of course the devil is in the detail in the sense that it depends what that consultation actually involves—whether and to what extent that is substantive consultation that actually involves the capacity to propose alternative ways of monitoring, for example, or to challenge forms of monitoring that they find unhelpful or difficult. And I think that is a higher bar to meet. In the case of the New South Wales legislation, for example, you have a requirement to disclose what monitoring you are doing, so in theory, people consult, but there is no real requirement to go through a substantive consultation process. So I think the answer is yes, there is evidence that that is more likely to be supported, but it depends a lot on what that consultation process looks like.

Wayne FARNHAM: Thanks, Dale.

The CHAIR: Great. Thank you. Dylan.

Dylan WIGHT: Thank you. We have heard some evidence from unions in particular during this inquiry about the use of workplace surveillance or data in terms of performance management and disciplinary procedures. There are two parts to it: how is that harmful, and how can that risk be reduced?

Dale TWEEDIE: Thank you. It is really important area, and I think one of the risks here is that once you are collecting large amounts of data, then it is very easy for that data to be used for purposes for which it was not initially intended. This is the phenomena of function creep, which I alluded to at the start, which has been discussed. You might start collecting by tracking, for example, what time people are spending on particular programs or keystrokes or whatever from a general performance perspective. And then you have a worker who you want to get rid of, and then you go, 'Well, look, we've got all this data available' that now becomes part of that process, where that process potentially was not intended initially, but then also it was not made clear to the people who were subject to this surveillance that this is the purpose for which this surveillance might be used. I think it is difficult where you do not have strict limits on what surveillance can be used for. Once employers are able to collect certain data and there are no limits on using it for alternative purposes, then it is very easy for that data to be used in ways that lack a fair process. I think a critical part of a fair process is that people are firstly aware that they are being monitored and then are aware that that data might be used for disciplinary purposes.

The second aspect of that is that the more data you have, the easier it becomes to use that data in an ad hoc way. So if you think if you are measuring people according to one data point—say, the amount of a product that somebody produces—then you have one criterion. If you have 50 data points or 100 data points and you want to target a particular worker who you do not like for whatever reason, then it becomes much easier to pick out particular subsets of that data that support the narrative that you want to tell about that worker. So I think this proliferation of surveillance itself creates a whole lot of problems in procedural fairness in performance management.

Dylan WIGHT: Do you think that to try and make that a fairer system or to try and help some of that, giving workers access to the data that is collected on them is a way to fix that? Or do you just think an outright ban on using that data in disciplinary proceedings is best?

Dale TWEEDIE: To my mind the access is probably not the most critical issue. I mean, I think it is important that people are aware of what data is collected on them. But having access to that data would not necessarily prohibit that data being used in ways that are unfair. To your important point about how you might actually manage this, I think firstly that the risks around requiring justification of surveillance and therefore limiting the spread of purposeless surveillance or surveillance that has no strong justification is itself part of managing that—limiting the proliferation of data collection means that you do not have 100 data points, say, that then can be used in that ad hoc way.

But also, to your second suggestion, I think certainly it is limiting the purposes for which data can be collected. This is probably getting a bit beyond my area of expertise, in that I look at impacts rather than legal frameworks, but I think there is a problematic element that you can collect data for one purpose and then bring that over into disciplinary purposes when it was not advised that that was how you were going to use it and you have so much data. I do think there do need to be some limitations on what you can use data for, but exactly what that would look like from a legal standpoint I am probably not so well placed to say.

The CHAIR: Thank you. Anthony.

Anthony CIANFLONE: Thanks, Dr Tweedie, for appearing and for your contribution. I wanted to ask your view on workplace surveillance and technology specifically on gig economy workers. In your experience and the research you have been doing, how do platform algorithms monitor gig economy workers and what impact physically, mentally and wellbeing-wise does it have on them?

Dale TWEEDIE: Thank you. It is not an area that I have researched in specifically myself, although I have looked at the emerging research coming out of this. I think where gig economy workers are at the cutting edge in a sense of where surveillance is going is that their performance is measured by a lot of intensive online monitoring but they are also managed by algorithm functions. I think that adds a different element compared to, say, a lot of workplaces where you have a manager who might have access to a whole range of data points on people's performance but ultimately the decisions around workplace management are made from an individual who makes some kind of sense and therefore there is scope to have a discussion about that. Whereas in gig economy work you have a lot of the decisions around, say, allocating work and who is on platforms or not made by an algorithm that is first of all not transparent. I guess that is probably the main point, that it is not transparent to workers how that algorithm is actually being used. Therefore if you think about the stress associated with that, you are being assessed and potentially, to the earlier question, being disciplined in the sense that you can be removed from the platform that you depend on for your income based on a set of criteria and you are not aware of what they are. You can see in the literature that when people talk about their experiences working on platforms a lot of time is spent trying to guess what they are actually required to do in order to meet the criteria that this algorithm is developing. So I think, certainly from the point of view of transparency, requiring people to actually be informed of what they are being assessed on would be a really critical element there.

The other aspect about the very intense level of surveillance those gig work algorithms enable is that they also create quite intensive time pressure in that your location and time use can be measured in a very granular way. We touched earlier on some of the risks around that, again, in the transport industry—incredibly dangerous—intensifying the speed at which people work as well as the psychosocial costs around the stress of fast work. I think they are very significant issues there.

The CHAIR: Thank you. We might finish with one more question. I might ask that question, if that is okay. In your submission you do talk about a recent report from the European Union about opting out or switching off in more intensive surveillance. I wonder whether you could show or talk to any best practice that you are seeing oversees that gives the workers I suppose a better consultation process so then, like you said, a collaborative approach is come to between the worker and the employer.

Dale TWEEDIE: In the report I was speaking to there was a kind of review of the literature and surveillance and some recommendations for the European context. I am not so well placed to speak to the legal frameworks that are set up in the European Union, but perhaps I could just speak to the two principles that I had in mind when I was looking at what a framework might look like that addresses some of the issues that come out from the research that I do around how surveillance impacts workers. To me, I think the most important legislative requirement is to set some kind of floor level of standards and then have the capacity to enforce those standards. I touched previously on insecure and precarious work and the idea that you can manage this through transparency alone and that if people know about the surveillance then those conversations will occur in the workplace. I think that is a very difficult approach.

I noticed a few people, in other submissions made to the Committee, are looking at the workplace occupational health and safety legislation as a model, where you have a kind of framework that sets out principles to govern how surveillance is used and you also in that framework compel consultation within the workplace so you enable rights for workers to elect representatives and create consultation forums where safety issues can be discussed. I think in the context I mentioned earlier there are important rights to be protected here, but I think there are also benefits to be gained by pushing people to consult about how they judge performance in the workplace in a more meaningful way. That is exactly the logic as well behind the safety legislation—that you protect basic rights but you also push people to talk about an issue that is of common concern. I think that kind of model, where you have enforceable principles and you have a regulator but you then also push consultation within the workplace, is a very plausible direction to be looking into.

The CHAIR: Very interesting. Thank you so much for your time today in answering our questions. It is a benefit to our committee to have all this on the table to consider when making some recommendations, so thank you for answering our questions today and the work that you are doing.

Dale TWEEDIE: My pleasure. Thank you for the invitation.

Witness withdrew.